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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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L.B., et al.,

Plaintiffs,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT, et al.,

Defendants.

Case No. [16-cv-04382-DMR](#)

**ORDER ON PLAINTIFFS' MOTION
FOR LEAVE TO FILE AN AMENDED
COMPLAINT**

Re: Dkt. No. 37

Plaintiffs L.B. and M.B., the parents of Plaintiff S.B., a former student, move pursuant to Federal Rule of Civil Procedure 15(a) to file an amended complaint. [Docket No. 37.] The court held a hearing on July 20, 2017. For the following reasons, the motion is granted.

I. BACKGROUND

A. Allegations in Original Complaint¹

In this action, Plaintiffs appeal the May 15, 2016 administrative decision of the California Office of Administrative Hearings pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.* Plaintiffs make the following allegations in their complaint. S.B., who was born in 1994, has multiple learning disabilities. She became eligible for special education and related services starting in eighth grade, and graduated from high school in June 2015. At all relevant times, S.B.’s school district of residence was West Contra Costa Unified School District (the “District”). [Docket No. 1 (Compl.) ¶¶ 12, 13.]

On July 25, 2013, S.B. filed a due process complaint with the Office of Administrative

¹ For purposes of this motion, the court considers only Plaintiffs’ allegations, which must be taken as true. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citation omitted).

1 Hearings (“OAH”) alleging that the District had failed to provide her with a free and appropriate
2 public education (“FAPE”) for the 2011-2012 and 2012-2013 school years. Compl. ¶ 25. In
3 August 2013, while the due process proceeding was pending, S.B. began attending Bayhill High
4 School in Oakland, California. *Id.* at ¶¶ 27, 29. S.B. and her parents settled their due process
5 complaint with the District on November 17, 2013. As part of the settlement, the District finalized
6 S.B.’s placement at Bayhill High School with specialized services. The parties also agreed that
7 the District would provide S.B. with “transportation to/from Bayhill in the form of reimbursement
8 for one round-trip per day of attendance at the current IRS rate.” *Id.* at ¶ 31. Plaintiffs allege that
9 the agreement provided that “[m]ileage reimbursement shall be provided within 30 days of the
10 District’s receipt of properly completed mileage reimbursement form(s),” and that “[m]ileage
11 reimbursement must be submitted by [S.B.] on a monthly basis.” *Id.*

12 Plaintiffs allege that after the settlement agreement was finalized, the District never
13 provided S.B. or M.B. with mileage reimbursement forms to complete. *Id.* at ¶ 32. In April 2014,
14 M.B. submitted mileage reimbursement to the District on forms created by her attorney for several
15 months, but never received reimbursement for the mileage claimed on these forms. *Id.* at ¶¶ 38,
16 39. In June 2015, M.B. submitted mileage reimbursement forms for August 27, 2013 through
17 June 5, 2015. Plaintiffs allege the District never processed the forms. *Id.* at ¶ 42. S.B. graduated
18 from Bayhill High School on June 7, 2015. *Id.* at ¶ 12.

19 According to Plaintiffs, at S.B.’s March 5, 2014 individualized education program (“IEP”)
20 meeting, her attorney requested that the District provide independent educational evaluations
21 (“IEEs”) in the areas of psychoeducation, speech and language, and occupational therapy. *Id.* at ¶
22 36. Plaintiffs allege that although the District advised that it would respond to the request “at a
23 later time,” they never received a letter from the District regarding their request for the IEEs. *Id.*
24 at ¶¶ 36, 40. Additionally, Plaintiffs allege that at the March 5, 2014 IEP meeting, S.B.’s attorney
25 requested District-provided transportation for S.B. because it was burdensome for M.B. to make
26 two round trips per day to transport S.B. to and from school. According to Plaintiffs, the District
27 responded that “it would only provide reimbursement pursuant to the settlement agreement.” *Id.*
28 at ¶ 37.

1 S.B. filed a due process complaint against the District on August 26, 2015, alleging that the
2 District had failed to provide her with a FAPE for the 2013-2014 and 2014-2015 school years by
3 failing to reimburse S.B. and/or her parents for round trip mileage to and from Bayhill High
4 School. *Id.* at ¶ 43. At a September 8, 2015 resolution session, the District informed S.B.’s
5 attorney that it could not accept the mileage reimbursement request previously submitted by M.B.
6 because the request was not submitted on District forms. S.B.’s attorney and her sister then
7 completed the District’s mileage reimbursement forms for the period August 27, 2013 to June 5,
8 2015. *Id.* at ¶ 44. M.B. signed the forms on October 9, 2015 and was told she would receive the
9 check within 30 days. *Id.* at ¶ 45.

10 S.B. amended her due process complaint in October 2015, challenging the District’s failure
11 to 1) reimburse S.B. and/or her parents for round trip mileage to and from Bayhill High School
12 through May 5, 2014; 2) provide transportation to and from school for S.B. after Plaintiffs’ May 5,
13 2014 request²; and 3) provide the three IEEs following Plaintiffs’ counsel’s March 5, 2014
14 request. *Id.* at ¶ 47. The matter was scheduled for trial on March 22-24, 2016. *Id.* at ¶ 55. At a
15 March 11, 2016 prehearing conference, counsel for the District informed Plaintiffs’ counsel for the
16 first time that the District had notified M.B. that it had granted the request for the IEEs in a letter
17 dated March 27, 2014. Counsel further stated that the District had already mailed M.B. and L.B. a
18 check for the mileage reimbursement. *Id.* at ¶ 52. Plaintiffs never received a check in the mail.
19 *Id.* at ¶ 53. On March 23, 2016, the second day of trial, the District provided M.B. with a check
20 for mileage reimbursement from August 27, 2013 to June 5, 2016. *Id.* at ¶ 60.

21 The Administrative Law Judge (“ALJ”) issued a decision on May 5, 2016. Compl. Ex. 1
22 (OAH Decision). In relevant part, the ALJ found that 1) OAH lacked jurisdiction over the issue of
23 whether the District denied S.B. a FAPE by failing to reimburse Plaintiffs for mileage for one
24 round trip per day from August 28, 2013 through March 5, 2014, since the reimbursement was
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26 ² It appears that Plaintiffs’ references to “May 5, 2014” in paragraph 47 of the complaint are typos,
27 and that the correct date is March 5, 2014, the date of the IEP meeting. Plaintiffs are directed to
28 address this error in their amended complaint. Additionally, Plaintiffs attached the ALJ’s decision
to their original complaint, but not to their proposed amended complaint. At the hearing,
Plaintiffs’ counsel stated that this was an oversight. Since the decision forms the basis for their
claims, Plaintiffs shall attach the ALJ’s decision to their amended complaint.

1 required by a settlement agreement and OAH lacks jurisdiction to enforce settlement agreements;
2) even if OAH had jurisdiction over the August 2013-March 2014 mileage reimbursement
3 dispute, the issue was moot because S.B. received full reimbursement on March 23, 2016; and 3)
4 S.B. did not establish that she was denied a FAPE based on the District's failure to provide IEEs,
5 since S.B. had failed to pursue the IEEs after the District granted her request. *Id.*

6 Plaintiffs filed this action on August 3, 2016, alleging three claims challenging the ALJ's
7 decision with respect to the three findings set forth above. Defendants moved to dismiss the
8 complaint, and on April 3, 2017, the court dismissed as moot Plaintiffs' first and second claims,
9 which challenged the ALJ's determinations regarding S.B.'s request for mileage reimbursement
10 for the period August 28, 2013 through March 5, 2014. [Docket No. 32.] In relevant part, the
11 court concluded that the claims were moot because the District had paid the mileage
12 reimbursement in full, and that none of the mootness exceptions applied. *Id.* at 6-8. The court
13 also held that the availability of attorneys' fees under the IDEA did not "revive Plaintiffs'"
14 otherwise moot appeal of the ALJ's determination of the mileage reimbursement issue," and that
15 the court was not obligated to decide the merits of Plaintiffs' moot claims solely for the purpose of
16 determining whether Plaintiffs should be the prevailing party on the claims for purposes of
17 attorneys' fees. *Id.* at 8-10. The court denied the motion to dismiss as to the third claim regarding
18 whether S.B. was denied a FAPE based on the District's failure to provide IEEs. *Id.* at 10-11.

19 In their opposition to the motion to dismiss, Plaintiffs requested leave to amend the
20 complaint to add a claim but did not comply with Civil Local Rule 10-1, which requires any party
21 moving to file an amended pleading to "reproduce the entire proposed pleading." The court
22 denied Plaintiffs' request without prejudice to filing a regularly-noticed motion for leave to file an
23 amended complaint. *Id.* at 12. The present motion followed.

24 **B. Proposed Amended Complaint**

25 Plaintiffs' proposed amended complaint adds three new claims for relief. [Docket No. 37-
26 4 (Proposed Am. Compl.).] Plaintiffs' first new claim for relief asserts that the District violated
27 the IDEA, 20 U.S.C. § 1415(c)(2)(B)(i)(I), by failing to respond to L.B. and M.B.'s due process
28 complaint within 10 days. *Id.* at ¶¶ 80, 81.

1 Plaintiffs' second new claim for relief challenges the ALJ's finding that Plaintiffs were
2 entitled to reimbursement for two round-trips per day instead of the actual costs of transportation
3 for transporting S.B. to and from Bayhill High School. *Id.* at ¶ 83.

4 Finally, the third new claim for relief asserts an evidentiary error:

5 The ALJ erred in refusing to allow Plaintiffs to present evidence
6 establishing that Plaintiffs did not speak English and presenting
7 evidence by way of an investigation conducted by the [California
8 Department of Education, "CDE"] which demonstrated that [the]
9 District lied to the CDE, which is the only reason the CDE found the
10 District in compliance. This goes to District credibility.

11 *Id.* at p. 28. Plaintiffs allege that on several occasions during the trial, their attorney "attempted to
12 question the District regarding the CDE complaint or make a showing that Plaintiffs had requested
13 translated copies of the IEPs at every meeting and the District had failed to provide them until
14 Plaintiff[s'] attorney filed a complaint with the CDE." *Id.* at ¶ 99.³

15 At the hearing, the parties agreed that this proposed third new claim is not appropriately
16 stated as a standalone claim, but that Plaintiffs should be allowed to add these allegations to their
17 claim regarding the District's failure to provide IEEs. Accordingly, Plaintiffs are granted leave to
18 amend the complaint to add this evidentiary issue to the IEEs claim.

19 **II. LEGAL STANDARD**

20 Under Federal Rule of Civil Procedure 15(a), leave to amend should be granted as a matter
21 of course, at least until the defendant files a responsive pleading. Fed. R. Civ. P. 15(a)(1). After
22 that point, Rule 15(a) provides generally that leave to amend the pleadings before trial should be
23 given "freely . . . when justice so requires." Fed. R. Civ. P. 15(a)(2). "This policy is to be applied
24 with extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir.
25 2003) (quotation omitted). In the absence of an "apparent reason," such as undue delay, bad faith
26 or dilatory motive, prejudice to the opposing party, futility of the amendments, or repeated failure
27 to cure deficiencies in the complaint by prior amendment, it is an abuse of discretion for a district
28 court to deny leave to amend. *Id.*

29 ³ Plaintiffs attached the ALJ's decision to their original complaint, but not to their proposed
30 amended complaint. At the hearing, Plaintiffs' counsel stated that this was an oversight. Since the
31 decision forms the basis for their claims, Plaintiffs shall attach the ALJ's decision to their
32 amended complaint.

1 court to refuse to grant leave to amend a complaint. *Foman v. Davis*, 371 U.S. 178, 182 (1962);
2 *Lockheed Martin Corp. v. Network Sols., Inc.*, 194 F.3d 980, 986 (9th Cir.1999). These factors do
3 not “merit equal weight,” and “it is the consideration of prejudice to the opposing party that carries
4 the greatest weight.” *Eminence Capital*, 316 F.3d at 1052. “Granting leave to amend does not
5 necessarily mean that the underlying allegations ultimately have merit.” *FlatWorld Interactives*
6 *LLC v. Apple Inc.*, 12-CV-01956-WHO, 2013 WL 6406437, at *3 (N.D. Cal. Dec. 6, 2013).
7 “Rather, ‘[a]bsent prejudice, or a strong showing of any of the remaining [] factors, there exists a
8 presumption under Rule 15(a) in favor of granting leave to amend.’” *Id.* (quoting *Eminence*
9 *Capital*, 316 F.3d at 1052).

10 **III. DISCUSSION**

11 The District opposes Plaintiffs’ motion on the ground that the proposed new claims are
12 futile and/or sought in bad faith. It does not argue that the proposed claims would result in undue
13 delay or prejudice. The court will address each claim in turn.

14 **A. Proposed First Claim for Relief**

15 Plaintiffs’ proposed first claim for relief asserts that the District violated the IDEA, 20
16 U.S.C. § 1415(c)(2)(B)(i)(I), by failing to respond to L.B. and M.B.’s due process complaint
17 within 10 days. Prop. Am. Compl. ¶ 81. According to Plaintiffs, the District never responded to
18 their due process complaint, resulting in Plaintiffs being forced to unnecessarily litigate the
19 mileage reimbursement issue. Further, Plaintiffs assert that if the District had “admitted that they
20 granted the IEE[s] on or around October 23, 2015, when Plaintiff[s’] attorney filed the amended
21 complaint, then at least Plaintiff[s] would have had notice of this defense.” *Id.* at ¶ 81. According
22 to Plaintiffs, the District’s failure to file an answer thus “denied S.B. and her parent[s] a right to a
23 FAPE as well as denied them the right to participate fully and fairly in the due process
24 proceeding.” *Id.* Plaintiffs cite a recent Ninth Circuit decision in support of this claim. *See M.C.*
25 *v. Antelope Valley Union High School District*, 858 F.3d 1189 (9th Cir. 2017).

26 “The IDEA contains numerous procedural safeguards that are designed to protect the rights
27 of disabled children and their parents.” *M.C.*, 858 F.3d at 1195. The statute “requires a school
28 district to respond to a parent’s due process complaint within 10 days.” *Id.* at 1199 (citing 20

1 U.S.C. §§ 1415(c)(2)(B)(i)(I) & 1415(c)(2)(B)(ii)). 20 U.S.C. § 1415(c)(2)(B) sets forth the
2 requirements for a “local educational agency[’s] response” to a parent’s due process complaint. It
3 provides in relevant part:

4 If the local educational agency has not sent a prior written notice to
5 the parent regarding the subject matter contained in the parent’s due
6 process complaint notice, such local educational agency shall,
within 10 days of receiving the complaint, send to the parent a
response that shall include—

7 **(aa)** an explanation of why the agency proposed or refused
8 to take the action raised in the complaint;

9 **(bb)** a description of other options that the IEP Team
considered and the reasons why those options were rejected;

10 **(cc)** a description of each evaluation procedure, assessment,
11 record, or report the agency used as the basis for the
proposed or refused action; and

12 **(dd)** a description of the factors that are relevant to the
13 agency’s proposal or refusal.

14 20 U.S.C.A. § 1415(c)(2)(B)(i)(I).

15 In *M.C.*, the parent of a disabled student filed a due process complaint against a school
16 district alleging substantive and procedural violations of the IDEA. 858 F.3d at 1194. Following
17 a hearing, an ALJ denied all of the plaintiff’s claims. *Id.* The plaintiff appealed the ALJ’s
18 decision, challenging in relevant part the school district’s failure to respond to the plaintiff’s due
19 process complaint as a violation of the IDEA. *Id.* at 1199. The district court concluded that the
20 school district’s “failure to respond didn’t infringe [the parent’s] opportunity to participate in the
21 IEP formulation process and, therefore, wasn’t a denial of a FAPE.” *Id.* The Ninth Circuit found
22 that the district court’s conclusion “missee[d] the mark” and reversed. Observing that the school
23 district “didn’t just miss a deadline” but instead “failed to *ever* respond to the [due process]
24 complaint,” the court held that while “[t]he District’s failure to respond may not have denied
25 plaintiffs a FAPE . . . it still violated the IDEA and due process.” *Id.* (emphasis in original).

26 The Ninth Circuit explained that “[l]ike an answer to a complaint, a response [to a due
27 process complaint] serves an important dual purpose: [i]t gives notice of the issues in dispute and
28 binds the answering party to a position.” *Id.* The court continued:

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Failure to file a response puts the opposing party at a serious
disadvantage in preparing for the hearing, as it must guess what
defenses the opposing party will raise. The problem is particularly
severe in IDEA cases because there is no discovery.

4 *Id.* The court further held that when a school district fails to file a timely response, an ALJ must
5 not go forward with a hearing but must instead order the school district to respond, *sua sponte* if
6 necessary, “and shift the cost of the delay to the school district, regardless of who is ultimately the
7 prevailing party.” *Id.* at 1199-1200, 1200 n.6. It remanded the case for the district court to
8 determine the prejudice the plaintiff suffered as a result of the district’s failure to respond “and the
9 award of appropriate compensation therefor.” *Id.* at 1200.

10 Plaintiffs state that *M.C.* “specifically hold[s] that Districts are required to file an answer
11 [to a due process complaint],” and thus provides support for Plaintiffs’ proposed first new claim.
12 [Docket No. 37-1 (Porter Decl., June 8, 2017) ¶ 6.] The District argues that the court should deny
13 leave to amend to assert this new claim because it is futile.

14 A proposed amendment may be denied as futile “if no set of facts can be proved under the
15 amendment to the pleadings that would constitute a valid and sufficient claim or defense.” *Miller*
16 *v. Rykoff-Sexton*, 845 F.2d 209, 214 (9th Cir. 1988). “[The] proper test to be applied when
17 determining the legal sufficiency of a proposed amendment is identical to the one used when
18 considering the sufficiency of a pleading challenged under Rule 12(b)(6).” *Id.* (citation omitted).
19 To survive a motion to dismiss, “a judge must accept as true all of the factual allegations contained
20 in the complaint,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citation omitted), and
21 may dismiss a claim “only where there is no cognizable legal theory” or there is an absence of
22 “sufficient factual matter to state a facially plausible claim to relief.” *Shroyer v. New Cingular*
23 *Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662,
24 677-78 (2009). “Denial of leave to amend on [the ground of futility] is rare,” *Netbula, LLC v.*
25 *Distinct Corp.*, 212 F.R.D. 534, 538-39 (N.D. Cal. 2003), and if it is “not clear beyond doubt that
26 amendment of [a] complaint would be futile,” a court should permit a party to amend its complaint
27 rather than deny leave to amend on the basis of futility. *See Ctr. for Biological Diversity v.*
28 *Veneman*, 394 F.3d 1108, 1114 (9th Cir. 2005). Ordinarily, “courts will defer consideration of

1 challenges to the merits of a proposed amended pleading until after leave to amend is granted and
2 the amended pleading is filed.” *Netbula, LLC*, 212 F.R.D. at 539 (citation omitted).

3 The District makes three arguments in support of its assertion that the proposed claim is
4 futile. First, it asserts that Plaintiffs waived this issue by failing to raise it before the OAH in their
5 pleadings or at the hearing. However, the District does not address the applicable legal standard
6 for waiver of the IDEA’s procedural safeguards, does not apply the standard to the allegations in
7 the proposed first amended complaint, and does not otherwise explain how “no set of facts” could
8 be proved under Plaintiffs’ allegations “that would constitute a valid and sufficient claim” for
9 violation of 20 U.S.C. § 1415(c)(2)(B). *See Miller*, 845 F.2d at 214.

10 Moreover, the District does not address the propriety of ruling on the issue of waiver in a
11 pleadings motion. Plaintiffs dispute that they waived the claim. They cite specific allegations in
12 the proposed amended complaint that support this position. Reply 3 (citing Prop. Am. Compl. ¶¶
13 52, 56, 72-73). In evaluating the sufficiency of the proposed claim for relief, the court must apply
14 the standard applicable to a Rule 12(b)(6) motion to dismiss and therefore must accept all of the
15 factual allegations as true. *See Miller*, 845 F.2d at 214. Given the existence of factual disputes
16 regarding waiver, the waiver issue cannot be decided on a Rule 15 motion and is more
17 appropriately addressed at a later stage. *See, e.g., Field v. Haddonfield Bd. of Educ.*, 769 F. Supp.
18 1313, 1325 (D.N.J. 1991) (addressing issue of waiver of procedural challenge to decision by board
19 of education on cross-motions for summary judgment); *Hinson ex rel. N.H. v. Merritt Educational*
20 *Ctr.*, 579 F. Supp. 2d 89, 101-02 (D.D.C. 2008) (addressing issue of whether plaintiff waived
21 allegation of delay in performing evaluations on cross motions for summary judgment).

22 Second, the District contends that it had no legal obligation to respond to the claims raised
23 in Plaintiffs’ due process complaint. In so arguing, the District asserts that the IDEA does not
24 require a response to *all* due process complaints; instead, the IDEA provides that a school district
25 must only respond when it “has not sent a prior written notice to the parent regarding the subject
26 matter contained in the parent’s due process complaint.” Opp’n 7 (citing 20 U.S.C. §
27 1415(c)(2)(B)(i)(I)). The District argues that it did not have to respond to Plaintiffs’ due process
28 complaint because it had already provided prior written notice regarding the subject matter of the

1 complaint. Plaintiffs respond that the District did not provide anything that qualifies as prior
2 written notice pursuant to the IDEA. Again, given the factual disputes, this issue should be
3 decided on the merits rather than at the pleading stage.

4 Finally, citing 20 U.S.C. § 1415(c)(2)(B)(i)(I)(aa)-(dd), the District argues that the IDEA
5 should be read to require a response “only when a due process complaint complains about an
6 agencies’ [sic] proposal to or refusal to take an action.” Opp’n 8. Based on this proposed
7 statutory interpretation, the District argues that it was not legally required to respond to the three
8 issues Plaintiffs raised in their original and amended OAH complaints because the due process
9 complaint did not complain about a District “proposal” or “refusal to take action.” The District
10 offers no case law or other support for its proffered interpretation, which may well rest on an
11 impermissibly narrow reading of the statute. *See M.C.*, 858 F.3d at 1195 (noting that the statute’s
12 procedural safeguards “are a central feature of the IDEA process, not a mere afterthought”).
13 Accordingly, Plaintiffs are granted leave to add the proposed claim for relief based on the
14 allegation that the District violated the IDEA, 20 U.S.C. § 1415(c)(2)(B)(i)(I), by failing to
15 respond to the due process complaint within 10 days.

16 **B. Second Claim for Relief**

17 Plaintiffs’ proposed second new claim for relief challenges the remedy awarded by the
18 ALJ for the District’s denial of a FAPE based on failure to provide transportation to S.B.
19 Specifically, the ALJ found that the District’s failure to offer and provide transportation for S.B.
20 from March 5, 2014 through the end of the 2014-2015 school years denied S.B. a FAPE. OAH
21 Decision 2-3, 15, 16. The ALJ concluded that “[a]s a result of this failure, [S.B.’s] family incurred
22 the cost of making two round trips per day in order to transport [S.B.] to and from Bayhill.” *Id.* at
23 19. Since Plaintiffs had already been awarded reimbursement for one round trip per day for this
24 time period, the ALJ awarded Plaintiffs reimbursement for one additional round trip per day at the
25 I.R.S. mileage rate for the applicable time period. *Id.*

26 Plaintiffs’ proposed second new claim challenges the ALJ’s finding that Plaintiffs were
27 entitled to reimbursement for two round-trips per day instead of the actual cost the District would
28 have had to pay for transporting S.B. to and from Bayhill High School. Prop. Am. Compl. ¶ 83.

1 According to Plaintiffs, S.B.’s mother and sister “credibly testified to the difficulties that they
2 encountered transporting S.B. to and from school each day . . . creat[ing] a substantial hardship to
3 the family that cannot be corrected by reimbursement for two round-trips per day.” *Id.* at ¶ 84.
4 Plaintiffs assert that they seek “to recover an amount equal to what the District would have
5 otherwise paid a professional transportation company” for the cost of transporting S.B., arguing
6 that “[t]he actual transportation rate is more appropriate” because “there were several factors that
7 made [driving S.B.] more burdensome.” Reply 3-4, 7.

8 The District argues that this claim is both futile and brought in bad faith, arguing that
9 Plaintiffs seek to “resurrect a claim for which they have already prevailed and do so by
10 misrepresenting the nature of their claims before OAH.” Opp’n 9. As to futility, the District
11 argues that Plaintiffs asked the ALJ to award an amount equal to what the District would have
12 otherwise paid a professional transportation company, and that the ALJ denied the request, stating
13 “[S.B.] provided no authority to support such a remedy.” *See* OAH Decision at 19. According to
14 the District, Plaintiffs’ request amounts to a claim for damages, which are unrecoverable under the
15 IDEA. *See Blanchard v. Morton Sch. Dist.*, 420 F.3d 918, 922 (9th Cir. 2005) (“Money damages
16 for retrospective and non-educational injuries are not available under the IDEA.”), *overruled on*
17 *other grounds by Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 871 (9th Cir. 2011). The District
18 further asserts that the IRS mileage reimbursement “takes into account the ‘actual costs’ of gas
19 and wear on a vehicle,” Opp’n 10, suggesting that the mileage reimbursement sufficiently
20 compensated Plaintiffs for their transportation costs. As to bad faith, the District asserts that
21 Plaintiffs requested in the alternative and were awarded mileage reimbursement for two round-
22 trips per day, instead of the one round-trip per day that the District had already agreed to pay.
23 Therefore, according to the District, this claim is brought in bad faith because Plaintiffs have
24 already prevailed on their actual request for two round-trips per day.

25 In response, Plaintiffs dispute that this claim seeks impermissible damages. Reply 7. As
26 with Plaintiffs’ proposed first claim, discussed above, the court concludes that the futility of this
27 claim cannot be resolved at this stage. Neither party did much to flesh out their arguments on this
28 issue. The IDEA allows courts to grant “such relief as the court determines is appropriate,” 20

1 U.S.C. § 1415(i)(2)(C)(iii), and the Ninth Circuit has held that “injunctive or other prospective
2 relief is ordinarily the remedy under the IDEA. *Taylor v. Honig*, 910 F.2d 627, 628 (9th Cir.
3 1990). It is not currently clear that the remedy Plaintiffs seek is foreclosed under the statute.
4 Accordingly, the court grants Plaintiffs leave to add the proposed claim for relief based on the
5 District’s denial of a FAPE based on failure to provide S.B. transportation.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Plaintiffs’ motion for leave to amend the complaint is granted.
8 Plaintiffs may file an amended complaint in accordance with this order within seven days of the
9 date of this order. Plaintiffs shall also fix the typographical error described in footnote 2, above,
10 and shall also attach a copy of the ALJ’s decision to the amended complaint.

11
12 **IT IS SO ORDERED.**

13 Dated: July 31, 2017

